UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHELLE BROWN, CYNTHIA GAMBLE and MARGARET SIMPSON, Plaintiffs,	:	**Complaint**
v.	:	Docket No.: 16-CV-5505
THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF CORRECTION and individually and in their official capacities, COMMISSIONER JOSEPH PONTE, ASSISTANT DEPUTY WARDEN DAVID DIBERARDINO and CAPTAIN JOSEPH BAIARDI Defendants,	:	**Jury Trial Demanded**

NATURE OF ACTION

1. Plaintiffs, MICHELLE BROWN ("BROWN"), CYNTHIA GAMBLE ("GAMBLE") and MARGARET SIMPSON ("SIMPSON") ("Plaintiffs") bring this action against defendants, THE CITY OF NEW YORK ("CITY"), THE NEW YORK CITY DEPARTMENT OF CORRECTION ("DOC"), and individually and in their official capacities, COMMISSIONER JOSEPH PONTE ("PONTE"), ASSISTANT DEPUTY COMMISSIONER DAVID DIBERARDINO ("DIBERARDINO") and CAPTAIN JOSEPH BAIARDI ("BAIARDI"), for damages (compensatory and punitive) for injuries plaintiffs have sustained as a result of defendants' discrimination of plaintiffs on the basis of race, gender, sexual harassment and hostile work environment, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., ("Title VII"), the New York State Human Rights Law, New York Executive Law § 296 et seq., (the "Executive Law"), the Administrative Code of the City

of New York § 8-107 et seq. (the "City Law"), injuries Plaintiffs have sustained as a result of Defendants' violation of 42 U.S.C. § 1983 due to a violation of Plaintiffs' First Amendment Right to Free Speech and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and all other applicable federal, state and local statutes.

2. The plaintiffs, through their attorney, KEN WOMBLE of Moore Zeman Womble, LLP, complaining of the defendants, respectfully allege:

JURISDICTION

3. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1342(4) and 1343. The Court has supplemental jurisdiction over the claims brought under the Executive Law and the City Law pursuant to 28 U.S.C. §1367.

4. As the unlawful practices complained of herein occurred within the Eastern District of New York, venue is proper in this District pursuant to 28 U.S.C. § 1391.

5. The amount in controversy exceeds $75,000 excluding interest and costs.

6. Plaintiffs filed charges of discrimination with the Equal Employment Opportunity Commission ("EEOC") on or about December 9, 2015.

7. The EEOC issued Right to Sue Letters to the Plaintiffs on or about June 29, 2016.

8. Plaintiffs received Right to Sue Letters from EEOC on or about July 6, 2016.

9. Plaintiffs have commenced this action by filing this complaint within 90 days of receipt of the Notices of Right to Sue.

PARTIES

10. Plaintiffs are residents of the State of New York.

11. Plaintiffs BROWN and GAMBLE are residents of Queens County, New York. SIMPSON is a resident of Kings County, New York.

12. Plaintiffs are all black females.

13. At all times hereinafter mentioned, Plaintiffs were Correction Officers employed by THE NEW YORK CITY DEPARTMET OF CORRECTION and assigned to the Brooklyn Detention Complex, which includes the Kings County Supreme Court as well as the Brooklyn House of Detention.

14. Plaintiff BROWN was appointed as a New York City Correction Officer for defendant DOC 1990 and at all times hereinafter mentioned, in that capacity was an employee of Defendants CITY and DOC.

15. Plaintiff BROWN served as a Correction Officer for 25 years before she was forced to apply for retirement in 2015 due to Defendants' unlawful conduct.

16. Plaintiff BROWN's retirement was effective November 25, 2015

17. Plaintiff GAMBLE was appointed as a New York City Correction Officer for Defendant DOC in1991 and at all times hereinafter mentioned, in that capacity was an employee of Defendants CITY and DOC.

18. Plaintiff SIMPSON was appointed as a New York City Correction Officer for defendant DOC in 1996 and at all times hereinafter mentioned, in that capacity was an employee of defendants CITY and DOC.

19. At all times hereinafter mentioned, and upon information and belief, the defendant CITY, was at all times relevant hereto, a municipal corporation duly organized and existing pursuant to the laws, statutes and chargers of the State of New York.

20. Defendant DOC was at all times relevant hereto, an agency of the defendant CITY

21. Defendant DOC manages, oversees and runs a number of detention centers and holding pens in the Supreme Courts located within THE CITY OF NEW YORK, including the holding pens for courtrooms at the Kings County Supreme Court.

22. At all times hereinafter mentioned, Defendant PONTE was acting Commissioner of THE NEW YORK CITY DEPARTMENT OF CORRECTION, Defendant DIBERARDINO was an appointed Assistant Deputy Warden of THE NEW YORK CITY DEPARTMET OF CORRECTION assigned to the Brooklyn Detention Complex and Defendant BAIARDI was an appointed CAPTAIN of THE NEW YORK CITY DEPARTMENT OF CORRECTION assigned to the Brooklyn Detention Complex.

FACTUAL ALLEGATIONS

23. Plaintiff BROWN was a 25-year veteran of defendant DOC when she was forced to apply for early retirement in 2015 due to an unrelenting hostile and retaliatory work environment at her work assignment in Kings County Supreme Court under the supervision of Defendant BAIARDI.

24. Despite repeated efforts on the part of plaintiff BROWN to have Defendants PONTE, DIBERARDINO and DOC intervene in order to address the hostile and retaliatory work environment at her work assignment in Kings County Supreme Court under the supervision of Defendant BAIARDI, her pleas were at best ignored and at worst were the basis of retaliation by all defendants.

25. During her tenure at THE NEW YORK CITY DEPARTMENT OF CORRECTION, Plaintiff BROWN had an exemplary record and was a valued member of the staff.

26. Plaintiff GAMBLE is a 25-year veteran of defendant DOC who was forced to endure an unrelenting hostile and retaliatory work environment at her work assignment in Kings County Supreme Court under the supervision of Defendant BAIARDI.

27. Despite repeated efforts on the part of Plaintiff GAMBLE to have Defendants PONTE, DIBERARDINO and DOC intervene in order to address the hostile and retaliatory work environment at her work assignment in Kings County Supreme Court under the supervision of Defendant BAIARDI, her pleas were at best ignored and at worst were the basis of retaliation by all Defendants, culminating in her transferred assignment to the Queens Detention Complex, although she had spent her career with THE NEW YORK CITY DEPARTMENT OF CORRECTION assigned to the Brooklyn Detention Complex.

28. During her tenure at THE NEW YORK CITY DEPARTMENT OF CORRECTION, Plaintiff GAMBLE has had an exemplary record and continues to be a valued member of the staff.

29. Plaintiff SIMPSON is a 20-year veteran of Defendant DOC who was forced to endure an unrelenting hostile and retaliatory work environment at her work assignment in Kings County Supreme Court under the supervision of Defendant BAIARDI.

30. Despite repeated efforts on the part of Plaintiff SIMPSON to have Defendants PONTE, DIBERARDINO and DOC intervene in order to address the hostile and retaliatory work environment at her work assignment in Kings County Supreme Court under the supervision of Defendant BAIARDI, her pleas were at best ignored and at worst were the basis of retaliation by all Defendants, culminating in her demotion of assignment to Brooklyn House of Detention.

31. During her tenure at THE NEW YORK CITY DEPARTMENT OF CORRECTION, Plaintiff SIMPSON had an exemplary record and was a valued member of the staff.

32. Prior to 2013, Plaintiffs BROWN, GAMBLE and SIMPSON did not have any significant issues with Defendant BAIARDI.

33. Beginning in 2013, Defendant BAIARDI repeatedly made racist, sexist and sexually harassing comments directly to or in the presence of Plaintiffs BROWN, GAMBLE and SIMPSON.

34. Defendant BAIARDI commonly used racist language towards black inmates, often in the presence of Plaintiffs BROWN, GAMBLE and SIMPSON.

35. Defendant BAIARDI made racist and disparaging comments about President Obama in the presence of Plaintiffs BROWN and SIMPSON, calling Obama "a useless black president," and saying about Obama, "I don't know why they put a black man in there."

36. On or about early March 2014, Plaintiff SIMPSON told Defendant BAIARDI that she did not appreciate the way he spoke to inmates, other correction officers and herself.

37. After Plaintiff SIMPSON confronted Defendant Baiardi about his offensive language and conduct, Defendant BAIARDI retaliated against Plaintiff SIMPSON by writing her up on May 12, 13, 14 and 15, 2014, for completely fabricated infractions or for violating rules that were never previously enforced.

38. Following numerous documented complaints by Plaintiff BROWN against Defendant BAIARDI, on or about November 24, 2014, Plaintiff BROWN requested an audience with Defendant PONTE so that she could address these issues with the Commissioner of the DOC.

39. Plaintiff BROWN received no response from Defendant PONTE.

40. On or about December 1, 2014, Plaintiff BROWN sent a letter to her Union President, Norman Seabrook, raising not only the instances of harassment that Defendant BAIARDI had put her through, but also the conflict of interest that existed due to Plaintiff BROWN's union delegate being friends with defendant BAIARDI.

41. On or about December 1, 2014, Plaintiff BROWN sent a letter to Warden Clayton Augustus, Defendant DIBERARDINO and Deputy Warden Deon Frazier notifying them of Defendant BAIARDI's campaign of harassment and retaliation against her.

42. On or about December 1, 2014, Plaintiff BROWN sent an additional letter to Warden Clayton Augustus of specific instances where Defendant BAIARDI had retaliated against her by refusing to give her overtime and also by failing to respond to her radio transmissions, which placed her in potential danger.

43. On or about December 3, 2014, DOC inmate Denzel Simmons was attacked by other DOC inmates while being held in the Kings County Supreme Court holding pens.

44. Both Plaintiffs BROWN and SIMPSON were present following the attack on inmate Simmons and observed both Defendants BAIARDI and DIBERARDINO fail to follow proper protocol in investigating the December 3, 2014 attack.

45. Inmate Simmons, who settled his case against the Defendants CITY, DOC, BAIARDI and DIBERARDINO, was pressured by Defendants BAIARDI and DIBERARDINO to refuse proper medical treatment while at the hospital.

46. On or about December 15, 2014, Plaintiff BROWN wrote an anonymous letter to Defendant PONTE voicing her concerns about the way that the December 3, 2014 attack on inmate Simmons was handled and investigated by Defendants BAIARDI and DIBERARDINO.

47. Shortly after submitting this anonymous letter to Defendant PONTE, Plaintiff BROWN was approached by defendant BAIARDI, her direct supervisor, and harshly questioned regarding the anonymous letter. Although Plaintiff BROWN denied to Defendant BAIARDI that she had written the letter, Defendant BAIARDI stated to Plaintiff BROWN that he knew that she had written the letter.

48. Plaintiff BROWN's regular assignment had been to assist the Kings County Hospital's Forensic Psychiatry professionals interview DOC inmates in Kings County Supreme Court. Plaintiff BROWN had received written commendation for her proficiency and professionalism at this assignment.

49. On or about December 26, 2014, Defendant BAIARDI removed Plaintiff BROWN from her regular post assisting the Kings County Hospital's Forensic Psychiatry professional and reassigned Plaintiff BROWN to the Brooklyn Detention Center jail in retaliation for her letter to Defendant PONTE.

50. The retaliatory reassignment of Plaintiff BROWN was against the express wishes of Elizabeth Owen, the Director of Forensic Psychiatry at the Kings County Hospital's Forensic Clinic, who wrote to the DOC expressing her support of Plaintiff BROWN and her dismay at her removal from that post.

51. On or about December 30, 2014, Plaintiff BROWN wrote a letter to Defendant DIBERARDINO and Warden Clayton Augustus regarding Defendant BAIARDI's repeated refusal to respond when Plaintiff BROWN radioed for assistance. In the letter, Plaintiff BROWN noted that Defendant BAIARDI had called her a "snitch" and a "troublemaker" and that he frequently sent her to different posts as retaliation for her speaking out against him.

52. On or about March 17, 2015, Plaintiff GAMBLE filed a formal Complaint of Discrimination with DOC Office of Equal Employment Opportunity ("OEEO") against Defendant BAIARDI citing the following specific instances of discrimination:

a. Defendant BAIARDI would put his hand on Plaintiff GAMBLE's shoulders and say "Say word to your lashes. Come on girl, bat those lashes for me."

b. Defendant BAIARDI would say to Plaintiff GAMBLE, "Let me run my fingers through your sweave [meaning 'weave']," and "Is that a weave or a wig?"

c. Defendant BAIARDI would say to Plaintiff GAMBLE, "If I wasn't married, you know you would be my girl, so what's up?"

d. On or about March 11, 2015, in Plaintiff GAMBLE's presence, Defendant BAIARDI got into a heated argument with an inmate during which Defendant BAIARDI called the inmate's mother a "black bitch" and he also said "Fuck you, crackhead."

53. In Plaintiff GAMBLE's March 17, 2015 Complaint of Discrimination, she listed Plaintiffs BROWN and SIMPSON as witnesses to the aforementioned discrimination.

54. On or about March 23, 2015, Plaintiff SIMPSON filed a memo with DOC about a March 20, 2015 incident where Defendant BAIARDI yelled repeatedly at Plaintiff SIMPSON demanding that she give him a report. Although Plaintiff SIMPSON asked Defendant BAIARDI what report he was referring to, he screamed at her, "I want my report or you will see."

55. On March 24, 2015, the day after Plaintiff SIMPSON filed a memo with DOC, Defendant BAIARDI submitted charges against Plaintiff SIMPSON alleging that on March 20, 2015, he saw Plaintiff SIMPSON "inside the pantry area with the lights out, her head down, eyes closed, sleeping."

56. On March 26, 2015, Defendant BAIARDI had Captain Santapaola charge Plaintiff GAMBLE because of an allegedly missing logbook. The charges against Plaintiff GAMBLE were not substantiated.

57. On or about March 30, 2015, Plaintiffs BROWN, GAMBLE and SIMPSON requested an audience with Deputy Warden Becky Scott, to address the discrimination they had received from Defendant BAIARDI.

58. On or about March 31, 2015, Plaintiff BROWN filed a charge of discrimination with the EEOC.

59. On or about April 1, 2015, Plaintiff SIMPSON filed a formal Complaint of Discrimination with DOC OEEO against Defendant BAIARDI, citing instances when Defendant BAIARDI had called Plaintiff SIMPSON a "black bitch" and told her that she was "a waste to every black man that ever looked at her." Plaintiff SIMPSON listed Plaintiff BROWN as a witness to this discrimination.

60. On or about April 8, 2015, Plaintiff SIMPSON submitted a report detailing an incident with an inmate on April 6, 2015. On that day, an inmate was screaming and yelling in one of the cells by himself. Defendant BAIARDI and Correction Officer Angrum went over to his cell to speak to him. After Defendant BAIARDI and Angrum left, the inmate became verbally abusive towards Plaintiff, but the content of the inmate's abuse was curiously specific to Plaintiff SIMPSON. The

inmate was yelling about Plaintiff SIMPSON always starting trouble and that Plaintiff SIMPSON was the reason the union was always getting involved.

61. On or about April 16, 2015, someone placed an anonymous call through 311 alleging that on April 2, 2015, Plaintiff SIMPSON had assaulted inmate Duvall Blair.

62. Plaintiff SIMPSON did not assault inmate Duvall Blair.

63. Due to the allegation that she had assaulted Duvall Blair, Plaintiff SIMPSON became suspicious that Defendant BAIARDI was using DOC surveillance footage, not to ensure the safety of his officers and the inmates in his care, but rather to spy on Plaintiff SIMPSON in order to charge her with any potential infraction he could create.

64. On or about April 24, 2015, Correction Officer Yvonne Johnson filed a report regarding harassment from Defendant BAIARDI that had occurred on April 21 and 24, 2015. Officer Johnson suspected that Defendant BAIARDI was trying to intimidate her so that she would not be a witness for Plaintiff GAMBLE in her EEO Complaint against Defendant BAIARDI.

65. On or about April 27, 2015, Defendant PONTE held a town hall meeting. At that meeting, Plaintiff BROWN spoke directly about the issues that she and Plaintiffs GAMBLE and SIMPSON had been having with Defendant BAIARDI, as well as their inability to get anyone at their union or at DOC to listen to them.

66. Plaintiff BROWN was able to get a meeting with Defendant PONTE. She spoke of the ongoing discrimination by Defendant BAIARDI as well his retaliation that followed the numerous complaints made by Plaintiffs BROWN, GAMBLE and SIMPSON.

67. Plaintiff BROWN addressed to Defendant PONTE how she and Plaintiffs GAMBLE and SIMPSON were almost never given overtime, despite their seniority.

68. Plaintiff BROWN addressed to Defendant PONTE how Defendant BAIARDI created a hostile work environment for Plaintiffs BROWN, GAMBLE and SIMPSON by removing them from their regular posts and constantly switching them around posts.

69. Plaintiff BROWN addressed to Defendant PONTE how Defendant BAIARDI retaliated against Plaintiffs GAMBLE and SIMPSON by writing them up for fabricated infractions and demanding that they write reports that were not required of other Correction Officers.

70. However, instead of any meaningful attempt to address her legitimate issues, Defendant PONTE merely told Plaintiff BROWN that if she was so unhappy, why did she not just leave DOC.

71. After the meeting with Defendant PONTE, it was clear to Plaintiff BROWN that the DOC had no interest in dealing with the constant discrimination and hostile work environment that she had endured for almost two years.

72. Shortly after she came to this realization, Plaintiff BROWN filed for early retirement on or about July 2015. Her retirement became effective on or about November 2015.

73. Plaintiff BROWN would have remained for as long as possible at DOC had she not been forced to choose between retirement and a discriminatory and incredibly hostile work environment.

74. On or about June 2015, Plaintiff SIMPSON was transferred permanently to the Brooklyn House of Detention, although she had spent the better part of her career with the DOC at the Kings County Supreme Court unit.

75. On or about June 2015, Plaintiff GAMBLE was transferred permanently to the Queens Detention Center, although she had spent the better part of her career with the DOC at the Kings County Supreme Court unit.

76. The actions of Defendant BAIARDI, as well as the inactions of Defendants DIBERARDINO, PONTE, DOC and CITY, resulted in a significant loss of income to Plaintiffs since 2014 as a result of the unfair and illegal denial of overtime shifts to Plaintiffs.

77. The actions of Defendant BAIARDI, as well as the inactions of Defendants DIBERARDINO, PONTE, DOC and CITY, resulted in a significant loss of increase in pension benefits for Plaintiff BROWN.

78. At the end of 2015, despite an extensive record of complaints by these Plaintiffs against defendant BAIARDI, defendant BAIARDI was allowed to retire instead of face any consequence for his illegal conduct.

79. Defendants PONTE, DIBERARDINO, DOC and CITY have paid little more than lip service to the longstanding and legitimate complaints of discrimination by the Plaintiffs.

80. Everywhere the Plaintiffs should have been able to turn, from their superiors to their union to the OEEO of the DOC, at best, ignored their complaints, and at worst, violated the promise of confidentiality that should have existed in a system that truly wishes to protect its employees.

81. Instead of protecting the Plaintiffs civil rights, the Defendants created an environment that allowed for the retaliation that these Plaintiffs were, and still are forced to endure.

First Cause of Action
Racial Discrimination, Gender Discrimination, Sexual Harassment, Hostile Work Environment Under Title VII

82. Plaintiffs repeat, reiterate and reallege paragraphs 1 to 81 of the Complaint as fully set forth herein.

83. By the acts and practices described above, Defendants have discriminated against Plaintiffs, three black females, in the terms and conditions of their employment on the basis of their race and gender, allowed Plaintiffs to be sexually harassed in the workplace and allowed a hostile work environment to persist despite Plaintiffs' repeated complaints in violation of Title VII.

84. Specifically, Defendants were aware of Defendant BAIARDI's conduct towards Plaintiffs, in that Plaintiffs complained repeatedly, in writing, and followed the chain of command to address their complaints. Defendants were aware of the discriminatory treatment Defendant BAIARDI subjected Plaintiffs to in favor of similarly situated male and non-black officers, which impacted the terms and conditions of Plaintiffs' employment and Defendants took no action to address Defendant BAIARDI's unlawful treatment of Plaintiffs.

85. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages and damages for mental anguish and humiliation as a result of Defendants' discriminatory acts.

Second Cause of Action
Retaliation Under Title VII

86. Plaintiffs repeat, reiterate and reallege paragraphs 1 to 85 of the Complaint as fully set forth herein.

87. By the acts and practices described above, Defendants have retaliated against Plaintiffs, three black females, in violation of Title VII, for complaining of and opposing race and gender discrimination, sexual harassment and a hostile work environment by subjecting Plaintiffs to unfair and unwarranted discipline, repeatedly allowing Plaintiffs to be denied employment opportunities afforded to similarly situated male and non-black employees and allowing a hostile work environment to persist such that Plaintiff BROWN was forced to take early retirement.

88. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages and damages for mental anguish and humiliation as a result of Defendants' discriminatory retaliation.

Third Cause of Action
Racial Discrimination, Sex Discrimination, Sexual Harassment, Hostile Work Environment In Violation of New York State Human Rights Law

89. Plaintiffs repeat, reiterate and reallege paragraphs 1 to 88 of the Complaint as fully set forth herein.

90. By the acts and practices and their course of conduct described above, Defendants have violated the New York State Human Rights Law, Executive Law §§ 290 to 297 by discriminating on the basis of race and sex, by sexually harassing, and by allowing, aiding and abetting the racial and sex discrimination and sexual harassment of Plaintiffs.

91. By the acts and practices and their course of conduct described avoce, defendants have violated the New York State Human Rights Law, Executive Law §§ 290 to 287 by fostering, creating, aiding and abetting in a hostile work environment.

92. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages and damages for mental anguish and humiliation as a result of Defendants' unlawful acts.

Fourth Cause of Action
Racial Discrimination, Sex Discrimination, Sexual Harassment, Hostile Work Environment In Violation of New York City Human Rights Law

93. Plaintiffs repeat, reiterate and reallege paragraphs 1 to 93 of the Complaint as fully set forth herein.

94. By the acts and practices and their course of conduct described above, Defendants have violated the New York City Human Rights Law, Administrative Code of the City of New York § 8-107 et seq., by discriminating on the basis of race and sex, by sexually harassing and allowing, aiding and abetting the sexual harassment of Plaintiffs.

95. By the acts and practices and their course of conduct described above, defendants have violated the New York City Human Rights Law, Administrative Code of the City of New York § 8-107 et seq., by fostering, creating, aiding and abetting in a hostile work environment.

96. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages and damages for mental anguish and humiliation as a result of Defendants' unlawful acts.

Fifth Cause of Action
Retaliation in Violation of the Executive Law

97. Plaintiffs repeat, reiterate and reallege paragraphs 1 to 96 of the Complaint as fully set forth herein.

98. By the acts and practices and their course of conduct described above, Defendants have retaliated against Plaintiffs for complaining of and opposing racial discrimination, gender discrimination, sexual harassment and a hostile work environment in violation of the Executive Law.

99. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages from Defendants' retaliatory conduct and will continue to do so unless and until the Court grants relief.

Sixth Cause of Action
Retaliation in Violation of the Administrative Code

100. Plaintiffs repeat, reiterate and reallege paragraphs 1 to 99 of the Complaint as fully set forth herein.

101. By the acts and practices and their course of conduct described above, Defendants have retaliated against Plaintiffs for complaining of and opposing racial discrimination, gender discrimination, sexual harassment and a hostile work environment in violation of the Administrative Code.

102. Defendants acted with malic and/or reckless indifference to Plaintiffs' statutorily protected rights.

103. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages from Defendants' retaliatory conduct and will continue to do so unless and until the Court grants relief.

Seventh Cause of Action
First Amendment Right to Free Speech
In Violation of 42 U.S.C. § 1983

104. Plaintiffs repeat, reiterate and reallege paragraphs 1 to 103 of the Complaint as fully set forth herein.

105. Plaintiffs' reporting of Defendants BAIARDI and DIBERARDINO to Defendants PONTE and DOC is speech protected under the First Amendment as speech by a concerned citizen on a matter of public concern, as Plaintiffs were concerned citizens at all relevant times mentioned herein, and a DOC Captain and Deputy Warden failing to follow proper investigatory protocol when an inmate has been injured by another inmate is undoubtedly a matter of public concern.

106. Defendants PONTE, DOC and CITY, while acting under color of law, knowingly, recklessly, or with gross negligence failed to instruct, supervise, control, and discipline Defendants BAIARDI and DIBERARDINO in their duties to refrain from unlawfully and maliciously retaliating against Plaintiffs for engaging in constitutionally protected activities.

107. As a result of the concerted, unlawful and malicious actions of the Defendants, while acting under color of law, Plaintiffs were subjected to various adverse employment actions as described above in retaliation for their engagement in protected activities.

108. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages from Defendants' retaliatory conduct and will continue to do so unless and until the Court grants relief.

Eighth Cause of Action
Fifth & Fourteenth Amendment Due Process Rights
In Violation of 42 U.S.C. § 1983

109. Plaintiffs repeat, reiterate and reallege paragraphs 1 to 108 of the Complaint as fully set forth herein.

110. Defendants, by and through its employees did, under color of statute, ordinance, regulation, custom, or usage, of any State or Territory, subject, or cause to be subjected, Plaintiffs to the Deprivation of their rights, privileges, or immunities secured by the Constitution and laws, and shall be liable to Plaintiffs.

111. As a results of Defendants' acts, Plaintiffs were deprived of their fundamental liberty and property rights without due process of law under the Fifth and Fourteenth Amendments of the United States Constitution.

112. Defendants acted with malice or with reckless indifference toward Plaintiffs' federally protected rights by harassing and retaliating against Plaintiffs after they exercised said rights.

113. As a result of the concerted, unlawful and malicious actions of the Defendants, while acting under color of law, Plaintiffs were subjected to various adverse employment actions, both economic and non-economic damages including mental anguish, public ridicule, public stigmatization and emotional distress..

114. Plaintiffs are now suffering and will continue to suffer irreparable injury and monetary damages from Defendants' retaliatory conduct and will continue to do so unless and until the Court grants relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter an award:

a) directing Defendants to pay Plaintiffs compensatory damages, in an amount that exceeds the jurisdictional minimum of this Court, including but not limited to back pay, front pay and benefits;

b) directing Defendants to pay Plaintiffs punitive damages;

c) directing Defendants to pay an additional amount to compensate Plaintiffs for the emotional distress and reputational damage Defendants' unlawful conduct has caused Plaintiffs, an amount that exceeds the jurisdictional minimum of this Court;

d) awarding Plaintiffs such interest as is allowed by law;

e) awarding Plaintiffs their reasonable attorneys' fees and costs; and

f) granting such other and further relief as the Court deems necessary and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiffs demand trial by jury in this action of all issues so triable.

Dated: Brooklyn, New York
October 3, 2016

MOORE ZEMAN WOMBLE, LLP

By KEN WOMBLE
Attorneys for Plaintiffs
66 Willoughby Street
Brooklyn, NY 11201
(718) 514-9100